

Alex Brown

From: Alex Brown
Sent: Wednesday, November 23, 2022 4:07 PM
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Cc: Michael Mulvaney; Scott Smiley; Madison Reeber
Subject: Subpoena on Group III --- Swissdigital USA Co., Ltd. V. Wenger, S.A., Case No. 6:21-cv-453 (W.D. Tx)
Attachments: doc05002220221122140056.pdf
Importance: High

Good afternoon, Darius.

I have just been informed by our client, Group III International, Inc., that your client, Swissdigital USA Co., Ltd., served it with the attached subpoena in connection with your discovery efforts in the suit styled, *Swissdigital USA Co., Ltd. V. Wenger, S.A.*, Case No. 6:21-cv-453 (W.D. Tx) (the "Litigation"). Candidly, I was somewhat surprised to receive notification of such a subpoena (as was our client) as it is our understanding that your client successfully opposed a Motion to Transfer the Litigation to the Southern District of Florida, in part because of your representation (which I understand the district court relied upon) that your client did not require any discovery from Group III and that your client would rely only on documents in Wenger's possession. If I am mistaken concerning this representation that I understand was made by your client to the district court in its opposition efforts, please help me understand the position you took before the district court in the Litigation. However, if I am not mistaken, please help me understand how your discovery efforts are appropriate in light of your representations that discovery would not be sought from Group III.

Aside from the foregoing procedural issues which need to be addressed, please also note that I am not available, and one of the principals of Group III (who would likely be the designated representative in the event a deposition goes forward) will be out of town on the date you unilaterally selected for the deposition. Even then, the time afforded for compliance (a mere 17-days straddling an intervening holiday) would be grossly inadequate. For these reasons, even if a deposition were to go forward, we would need to seek a new, mutually agreeable, date and time.

That said, I also note that, on first glance, the duces tecum requests and accompanying deposition topics appear to be extremely overbroad and cover areas that have absolutely no potential relevance to the Litigation and which would undoubtedly encompass work product and attorney/client privileged material, *e.g.*, "All documents and communications concerning the Accused Products" and "All documents and communications concerning the marketing, advertising, or promotion of the Accused Products." Accordingly, and while expressly reserving all rights, remedies and defenses to the subject subpoena, and to the extent we will be able to work through all procedural, timing and other issues and are still able to accommodate your client's desired discovery pursuit, your duces tecum enumerations will require substantial revisions.

I understand that tomorrow is Thanksgiving, and our office is closed for the remainder of the week as a result, as yours may be; but, please let us substantively hear from you on the above as soon as possible as we do not have much time to work through the above given your unilaterally selected date for compliance. Indeed, I propose that you provide your substantive response to the foregoing by Noon (EST) on Monday, November 28, 2022, and I suggest that we thereafter have a call that same afternoon to discuss the issues. Presently, I am available to conduct such a call between 2P and 4P EST that afternoon. Please advise of your availability.

I look forward to hearing back from you.

Happy Thanksgiving,

Alex

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